

RETHINKING THE SECURITY ARCHITECTURE OF NORTH EAST ASIA

Michael J Kelly and Sean Watts***

In the aftermath of the Cold War, many began to question the continuing efficacy, or at least call for reform, of collective security structures such as the North Atlantic Treaty Organization and the United Nations Security Council. Yet, North East Asia never enjoyed a formal, institutionalised collective security structure. As Russia and the United States recede and China emerges in North East Asia, this article questions whether now is the time to consider such an arrangement. Financially, Japan and South Korea are locked into a symbiotic relationship with China (as is the United States), while the government in Beijing continues to militarise and lay territorial and maritime claims to large areas of the region. Moreover, the regime in North Korea, with its new nuclear capabilities, remains unpredictable. Consequently, central components to the question of collective security in North East Asia are the equally vexing questions of what to do about North Korea and whether a new formalised security arrangement would include or exclude the People's Republic of China.

The US is committed to maintaining our historic security alliances in Asia and building on those relationships to counter complex global threats.¹

I INTRODUCTION

While United States engagement in East Asia dates back to the legendary appearance of Commodore Perry's fleet of warships in Tokyo Bay in the summer of 1853, the commitment of the

* Professor of Law and Associate Dean for Faculty Research and International Programs, Creighton University School of Law. Professor Kelly is a former chair of the Section on National Security Law of the Association of American Law Schools (AALS). He writes on use of force theory and collective security structures – especially with regard to the United Nations Security Council.

** Assistant Professor of Law, Creighton University School of Law. Professor Watts teaches military law and writes on the evolution of, and new applications for, the law of war. He has recently collaborated with the International Committee of the Red Cross and participated in an exchange with the Chinese People's Liberation Army on the law of war.

1 Hillary Rodham Clinton "US-Asia Relations: Indispensable to Our Future" (Address to the Asia Society, New York, 13 February 2009).

United States of America to regional security was not cemented until the conclusion of World War II. With a new global outlook, and faced with the prospect of the impending Cold War, the United States focused its security concerns on Europe and East Asia.

In Europe, western powers launched the North Atlantic Treaty Organization (NATO) as a bulwark against further Soviet expansion and as the chief institution guaranteeing collective security in the region. However, no similar regional institutional framework emerged to guarantee collective security in East Asia. Instead, the United States took a more direct role in security affairs. Japan and South Korea largely followed Washington's direction in North East Asia, while smaller States emerged from colonialism acquiescing to United States influence in South East Asia.

The United States waged war in each Asian theatre during the ensuing years – attempting to institute Kennan's policy of containment.² The outcomes were dramatically different. In North East Asia, the United States fought under the auspices of the United Nations (UN) against North Korean and Chinese invasions on the Korean peninsula. The resulting stalemate ossified an informal military alliance between South Korea, Japan and the United States that continues to this day and provides the basis for United States participation in that region's security.

In South East Asia, the United States fought a protracted war in Vietnam that lacked significant international backing and failed to accomplish its objectives. Ultimately, upon the United States' withdrawal from its major naval and air bases in the Philippines, United States influence in the security of this region changed considerably. Indeed, as East Timor struggle for independence from Indonesia reached its climax in 1999, Australia stabilised the island and provided security under a UN mandate.

The proper role of the United States in North East Asian security has not been adequately explored since the end of the Cold War. Shortly after the terrorist attacks of 11 September 2001, the United States found itself engaged in two more Asian wars – although this time, fighting in South Western and Central Asia. Thus, the security focus of the United States has been largely directed to those areas of operations.

Efforts to counter threats of transnational terrorism have taken centre stage in international security strategy. In addition to involving the United States and allies in two major armed conflicts in Afghanistan and Iraq, counter-terrorism strategy has generated new alliances and provoked international engagement in places previously far removed from the focus of global security strategists. Meanwhile, North East Asian security remains focused on traditional concerns such as resolution of long-standing territorial disputes and competition for natural resources. Lacking a significant transnational terrorist threat, will North East Asia manage to garner the attention and

2 In 1950, while serving as United States Ambassador to the Soviet Union, George Kennan penned an influential security policy proposal directed at containing the spread of communism. See National Security Council *United States Objectives and Programs for National Security* (NSC-68, Washington, 1950).

resources required to develop a functional and lasting United States security strategy? Or, will preoccupation with transnational terrorism distract United States strategic thought and divert the application of national power from the development of a mature, multinational Asian collective security structure? Perhaps more importantly, does the history of collapsed Asian multinational security structures forecast a similar failure for future efforts?

This article briefly explores these questions. We begin with a simple characterisation of recent historical North East Asian security strategy. An assessment of how North East Asian security concerns have changed follows. Finally, we consider the prospects for the development of a workable security structure. Recognising divergent perspectives on the role of law, hard geopolitical and geo-economic realities and future demographic and economic projections, this article seeks to define a potentially workable architecture for collective security to succeed in a fast-transitioning area beset by historical grievance and generational mistrust.

II THE UNITED STATES AND REGIONAL SECURITY IN NORTH EAST ASIA

Three relationships currently define the United States' approach to collective security in North East Asia, two of which are grounded in long-standing international legal instruments: the United States' commitment to defend the 38th Parallel on the Korean peninsula; its pledge to defend Japan; and, its ambiguous security arrangement with Taiwan.

In Korea, the United States-led war to restore South Korean sovereignty (1950-1953) was in full accord with international law, having been duly authorised by the UN Security Council.³ At the end of hostilities on the Korean peninsula, the Armistice Agreement froze the position of the parties and survives as the controlling legal arrangement between the formerly warring States.⁴ United States and South Korean armed forces implement the Armistice Agreement through a complex, multi-tiered collection of command structures headed by the Combined Forces Command (CFC). Although the CFC has been long commanded by United States' representatives, South Korea recently secured a commitment to restructure the Command, realigning responsibilities in its favour.⁵

The United States-Japan security relationship has also evolved significantly since early United States' involvement. While the United States' post-World War II military presence may have been initially conceived as a guarantee against the resurrection of a nationalist Japanese threat to East

3 See SC Res 82, S/RES/82/1950 (1950); SC Res 83, S/RES/83/1950 (1950); and, SC Res 84, S/RES/84/1950 (1950).

4 "1953 Agreement between the Commander-in-Chief, United Nations Command, on the one hand, and the Supreme Commander of the Korean People's Army and the Commander of the Chinese People's Volunteers, on the other hand, concerning a Military Armistice in Korea" S/3079 (1953).

5 See United States-Republic of Korea 2007 Strategic Transition Plan (28 June 2007).

Asia, that rationale quickly evaporated. Soon, a more traditional military alliance was born of necessity as the United States entered the Cold War – first articulated in the Security Treaty of 1951⁶ and later revised in the Treaty of Mutual Cooperation and Security of 1960.⁷ Celebrating its 50th anniversary this year, the latter Treaty continues, at least in form, to guide the United States-Japan alliance – even as the initial rationale for its existence has changed over the years:⁸

The 1960 Treaty ... turned out to be a strikingly successful insurance policy. The Japanese paid the premiums by offering American troops bases and cash. The Americans promised nuclear and non-nuclear American deterrence in the region, while at the same time acting as a "cork in the bottle" against possible Japanese remilitarization. ... Both countries still refer to the alliance as a cornerstone of their security policies ...

And while the United States commitment to defend Taiwan was formally fixed in a bilateral treaty,⁹ this was rescinded in 1972 as the United States recognised the communist government in Beijing as the legal government of China.¹⁰ Since then, the United States security commitment to Taiwan appears to have been largely symbolic – equal parts a token of United States' engagement in East Asia and a venue for signaling approval and disapproval of Chinese action.

The post-1972 ambiguous bilateral security relationship between the United States and Taiwan may have served as a proxy for direct United States engagement with China, or as a strategic platform to keep China off balance or disrupt the latter's influence in the region. Likewise, the ambiguous bilateral relationship between China and North Korea may represent the considered proxy response by Beijing to keep the United States off balance. A 30-year stasis ensued via these client State arrangements. In the absence of a viable blue water navy, Chinese responses were

6 Japan-United States Security Treaty (8 September 1951).

7 Treaty of Mutual Cooperation and Security between Japan and the United States of America (19 January 1960).

8 "America's Security Treaty with Japan: The New Battle of Okinawa" *The Economist* (London, 16 January 2010) at 27. This essential bedrock agreement remains solid despite turmoil between Tokyo and Washington after the election of Yukio Hatoyama as Japan's new Prime Minister and his initial statements seeking to reduce the United States military "footprint" in Japan. The Japanese government continues to pay the United States between US\$3 and US\$4 billion annually for the United States military to remain in Japan. See George R Packard "The United States – Japan Security Treaty at 50: Still a Grand Bargain?" (2010) 89 *Foreign Affairs* 92 at 99.

9 United States-China Mutual Defense Treaty (2 December 1954).

10 See Joint Communiqué of the United States of America and the People's Republic of China (28 February 1972) <www.taiwandocuments.org>.

limited.¹¹ In any case, as the Taiwan-China dynamic improves somewhat, the rationale for United States protection may be evaporating.

Yet, juxtaposed with recent peaceful overtures and other conciliatory measures directed toward Taiwan, China has laid down a series of triggering actions in 2005 that, if activated, would lead to military intervention by China in Taiwan. Article 8 of the controversial Anti-Secession Law allows for military resolution of the Taiwan issue on the basis of three eventualities:¹²

- (1) if 'Taiwan independence' forces, under whatever name and method, accomplish the fact of Taiwan's separation from China,
- (2) or if a major event occurs which would lead to Taiwan's separation from China,
- (3) or if all possibility of peaceful unification is lost.

Thus, Beijing continues to offer both stick and carrots on the Taiwan question.

III ASIAN COLLECTIVE SECURITY AND THE FAILURE OF THE SOUTH EAST ASIA TREATY ORGANIZATION

Regional collective security structures may exist under the super-collective security structure provided by the UN Charter. Prime examples of these arrangements include NATO and the Warsaw Pact (now defunct). Although a South East Asia Treaty Organization (SEATO) was created during the Cold War and existed until 1977, no similar effort was made to institutionalise an alliance for North East Asia. Indeed, politically conservative scholars in the United States have, since the terrorist attacks of 11 September 2001, disdained the idea of institutionalised collective security in

11 Nevertheless, Chinese capabilities with respect to Taiwan are nearing a point at which United States naval power may be checked. See Jack Bremer "Chinese missile threatens US Navy's Pacific fleet" (18 November 2009) The First Post <www.thefirstpost.co.uk>:

... US Naval Intelligence has established that China's development of the world's first anti-ship missile, long mooted, is nearing readiness.

With a range of nearly 900 miles, and capable of being fired from mobile land-based launchers, the missile is "specifically designed to defeat US carrier strike groups" by destroying aircraft on the carrier's deck and control towers.

Coupled with a new 'over-the-horizon' radar system the Chinese are also developing, the threat of the missile could make the South China Sea a no-go zone for the US Navy – with potentially dramatic consequences.

The US currently keeps five aircraft carriers based in the Pacific and their mission includes the defence of Taiwan in the event of a Chinese attack on what Beijing sees as a breakaway province.

12 See Anti-Secession Law 2005 (China), art 8.

favour of returning to a looser informal concert of "Great Powers" – reminiscent of pre-World War I European balancing arrangements.¹³

Yet some have suggested the creation of a NATO analogy for North East Asia – as "a kind of North Pacific Treaty Organization (NPTO) or a Northeast Asia Treaty Organization (NEATO)", and noting that:¹⁴

NATO started as an alliance directed against a supposedly expanding Soviet Union, but now it still exists, even though it has lost its original *raison d'être*. This means that a NEATO would not have to have an enemy, as such, either.

This is not a new concept. Secretary of State John Foster Dulles floated the collective security idea for North East Asia as early as 1954.¹⁵ Dulles' proposed structure would even have included Taiwan. However, a worsening relationship between South Korea and Japan precluded such a plan from becoming reality.¹⁶ Nonetheless, Secretary Dulles's similar template for South East Asia, grouping together the United States, Great Britain, France, New Zealand, Australia, Pakistan, the Philippines and Thailand into a "South East Asia Treaty Organization" (SEATO) actually took root.¹⁷

In 1954, the United States initiated SEATO as a collective security response to communist expansion in South East Asia.¹⁸ Unlike NATO, which unified military commands into standing forces under a Supreme Allied Commander, SEATO relied on the un-integrated military forces of its member nations. The legal foundation for SEATO was the Southeast Asia Collective Defense Treaty, known as the Manila Pact.¹⁹

13 Robert J Delahunty and John Yoo "Great Power Security" (2009) 10 CJIL 35 (the authors' definition of collective security is rather cramped: "the traditional aim of collective security, ... [which] we take to be the prevention or reduction of interstate conflict" (at 46); "[a] system of great power politics ... would do equally well and probably better at maintaining international peace and security than the current approach" (at 47). See also Kenneth Anderson "United Nations Collective Security and the United States Security Guarantee in an Age of Rising Multipolarity: The Security Council as the Talking Shop of the United Nations" (2009) 10 CJIL 55.

14 George Oakley Totten III "Review of Sung Chul Yang, Victor D. Cha, Alignment Despite Antagonism: The United States-Korea-Japan Security Triangle" (2000) 3 Acta Koreana 175, available at <<http://koreaweb.ws>>.

15 National Security Council *Strategy for Developing Position of Military Strength in the Far East (expansion of Korean armed forces; use of Korean troops in Indochina)* (NSC-5416, Washington, 1954).

16 Huraka Matsuda "A Clash of Empires in East Asia: The Geneva Conference on Korea, 1954" (2007) 20 Seoul J Korean Studies 193 at 205.

17 Ibid.

18 "Southeast Asia Treaty Organization (SEATO), 1954" <www.globalsecurity.org>.

19 Southeast Asia Collective Defense Treaty (adopted 8 September 1954, entered into force 19 February 1955).

Under the terms of the Treaty, members were obligated to defend one another against both external aggression and internal civil uprising as well as to provide economic and social support. Headquartered in Bangkok, the member nations included the United States, Great Britain, France, Australia, New Zealand, the Philippines, Thailand and Pakistan. From the outset, membership hobbled the viability of this collective security arrangement, which included only three Asian States.²⁰

The Philippines joined in part because of its close ties with the United States and in part out of concern over the nascent communist insurgency threatening its own government. Thailand, similarly, joined after learning of a newly established "Thai Autonomous Region" in Yunnan Province in South China, expressing concern about the potential for Chinese communist subversion on its own soil.

The rest of the region was far less concerned about the threat of communism to internal stability. Burma and Indonesia both preferred to maintain their neutrality rather than join the organization. Malaya (including Singapore) found it politically difficult to give formal support to the organization, though through its ties with Great Britain it learned of key developments. Finally, the terms of the Geneva Agreements of 1954 signed after the fall of French Indochina prevented Vietnam, Cambodia and Laos from joining any international military alliance, though these countries were ultimately included in the area protected under SEATO and granted "observer" status.

Unlike NATO, SEATO failed to become a strong or even operable treaty organisation because of the paucity of Asian participation and the divergence of Asian views on the threat of communist expansion. United States involvement in Vietnam proved to be the undoing of SEATO. The United States' entanglement in Vietnam, in which the British refused to participate, was set against the backdrop of French withdrawal from military cooperation in both NATO (1966) and SEATO (1967), and a shift of allegiance by Pakistan in the 1960s toward communist China as the United States drew closer to India.²¹

By 1972, Pakistan had completely withdrawn from SEATO and two years later France had suspended payment of its membership assessments. Five months after the fall of Saigon in April 1975, SEATO's member States decided to phase out the alliance, which was formally dissolved in 1977. The humiliating frustrations of the United States in Vietnam caused British Field Marshall Bernard Montgomery to wryly observe: "[t]he U.S. has broken the second rule of war. That is, don't go fighting with your land army on the mainland of Asia. Rule One is don't march on Moscow. I developed these two rules myself."²²

20 Ibid.

21 For more on SEATO's history, see Leszek Buszynski *SEATO: The Failure of an Alliance Strategy* (Singapore University Press, Singapore, 1983); William Schoenl (ed) *New Perspectives on the Vietnam War: Our Allies' Views* (University Press of America, Lanham (Maryland), 2002).

22 Arthur Gwynne and Jones Chalfont *Montgomery of Alamein* (Atheneum, New York, 1976) at 318.

For the next 20 years, the United States' military presence in South East Asia was centred on large naval and air force installations in the Philippines. However, both were abandoned in the early 1990s and United States security interests in the region now focus on counter-terrorism efforts in Indonesia and the Philippines and the protection of international shipping lanes. The military junta in Burma remains a human rights concern, but poses little threat beyond its borders.

Although the collapse of SEATO might reasonably give pause to efforts to establish new Asian multilateral security arrangements, closer examination reveals critical differences in the now prevailing conditions, outlooks and interests of potential North East Asian alliance members.

IV THE CURRENT NORTH EAST ASIAN SECURITY CLIMATE

Similar to concerns surrounding South East Asia, the early days of the Cold War brought to communist regimes in China, North Korea and the Soviet Union fears of a Pacific-based NATO analogue directed against them – prompting Nikita Khrushchev to push hard for a nuclear-free zone in the Far East. Influential Japanese scholars bought into these fears in the late 1950s. For example, Koshiro Okakura noted, in response to Khrushchev's suggestion:²³

These appeals from outside coincided with the new development of the peace movement in Japan, which began last autumn, when the Kishi Cabinet, representing the will of the militarists and the monopoly capitalists of Japan, launched talks with the U.S.A. concerning the revision of the U.S.-Japanese Security Treaty.

This revision, if realized, means that Japan would become a U.S. nuclear-rocket base unconditionally and perpetually, and the so-called NEATO (North-East Asia Treaty Organization), a new aggressive military bloc of South Korea, Taiwan and Japan against People's China, the U.S.S.R. and the other peaceful countries, would be actually established.

Communist China agreed with this assertion,²⁴ reflecting a paranoia that continued well into the 1960s when the official Chinese news agency branded the Japan-South Korea Treaty normalising relations between those two States (and implicitly pledging military cooperation) a "precursor to an anti-Chinese North East Asia Treaty Organization."²⁵ Even today, Beijing remains wary of such talk – much as Russia has inherited the Soviet Union's mistrust of NATO.

Although Washington's containment policy has faded since the end of the Cold War (with the notable exceptions of Cuba and perhaps increasingly Venezuela), China would nevertheless either be at the core of such an organisation or the object around which it is constructed – two entirely

23 Koshiro Okakura "For a Neutral Policy" (1959) 5 *International Affairs* 102 at 102.

24 *Ibid.*

25 Qingxin Ken Wang *Hegemonic Cooperation and Conflict: Postwar Japan's China Policy and the United States* (Praeger, Westport (Connecticut), 2000) at 144.

different models. In either case, the United States and Japan would be integral to any list of included States. Others would include Russia, South Korea and Canada. Taiwan would likely be precluded from any role as a full partner for the political reasons articulated above.

The significance of a new treaty organisation that includes China and Russia cannot be overstated. Indeed, it would represent a paradigm shift. Traditionally, regional security organisations have been based on military alliances. That was certainly the case with NATO, the Warsaw Pact and SEATO. However, an NPTO that counts China and Russia among its members would be a regional collective security arrangement not necessarily based upon a military alliance. Such a non-traditional alliance formula raises knotty practical questions, including:

- Would the treaty include an analogue to Article 5 of the North Atlantic Treaty²⁶ – requiring military defence of any member that is attacked?
- What would be the extent of cooperation among Russia, China and the United States on nuclear issues?
- Can joint military exercises be undertaken that include the Russian Army, the People's Liberation Army and United States combined forces without jeopardising military secrets?
- Is inter-operability among divergent computer and satellite systems required and, more importantly, would the United States trust its partners in this realm?
- Unlike a treaty organisation based upon an alliance, would this organisation amount to an "arms-length" apparatus based upon a common nexus of security concerns and, if so, how effective could that be?
- Would a new treaty organisation necessarily require the termination of bilateral security treaties between the United States, Japan and South Korea?
- Would the United States be required to resolve its strategic ambiguity with respect to Taiwan's security as a *quid pro quo* for Chinese participation?

26 North Atlantic Treaty (adopted 4 April 1949, entered into force 24 August 1949), art 5. Article 5 reads:

The parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all, and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self defence recognized by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually, and in concert with the other parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.

Any such armed attack and all measures taken as a result thereof shall immediately be reported to the Security Council. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security.

- Would the organisation be able to muster consensus on an approach to security on the Korean peninsula beyond the present standoff along the Demilitarized Zone?

The motivations of States to create such an entity are varied and still quite speculative. Nevertheless, we can infer what might drive the Northern Pacific powers together. For the United States, the twin interests are addressing the direct military threat from North Korea, the derivative nuclear proliferation issue, and developing a framework to reduce anxiety generated by the rise of China. The former two are likely short-term concerns, whereas the latter is a longer term dilemma. The post-Cold War draw down of United States military forces in the region has been accompanied by gentle prodding from the Pentagon for Japan, Taiwan and South Korea to become more self-reliant in the security realm. An effective collective security apparatus could ease the threat environment that makes these countries nervous about a waning United States physical presence.

For Japan, a formalised joint security commitment is important – not only to make Tokyo feel more secure, but also to stabilise the cross-border business environment and to further protect and encourage Japanese foreign investments in the region. To the extent that China could be brought into the arrangement, Japan would welcome a security guarantee from Beijing that would also (hopefully) put to rest lingering post-World War II resentments.

For Russia, this is partly a question of reasserting Moscow's influence in the region and its global engagement – both of which waned considerably in the aftermath of the Soviet Union's break-up. Russian resentment at being frozen out of NATO and the European Union could also be ameliorated with its inclusion in a Pacific treaty organisation. The Kremlin might also consider this an opportunity to resolve its dispute with Japan over the four southernmost Kuril Islands – which Russia administers in the face of persistent Japanese claims of sovereignty.

For South Korea, the most vulnerable State given the instability and armaments of its neighbour to the north, this is all about dealing with the regime in Pyongyang. South Korea has steadily built itself into an economic giant under United States protection since the end of the Korean War. Its 50-year old standoff with North Korea at the 38th Parallel is in doubt as the regime of an increasingly sick Kim Jong Il nears its end. Managing this transition within a collective security environment would manifestly be in South Korea's interest – especially if North Korea's major ally in the region, China, is an integral part of the arrangement.

Canada would likely emphasise economic over physical security. But if the latter flowed from the former, then it would likely be amenable to participation, as Holmes notes in his exposition on the subject:²⁷

27 John W Holmes "Canada and the Pacific" (1971) 44 *Pacific Affairs* 5 at 8-9.

... there is nothing in the Pacific area comparable to NATO. ... Without some Pacific treaty organization it would be hard to find a role for Canada in Pacific security. Canada has never been much interested in the skeletal security organizations Some of them seemed to Ottawa more provocative than useful. ...

If the United States, South Korea and Japan, for example, were at any time to propose a North Pacific treaty organization, then Canada would undoubtedly have to think whether its interests required it to join or contribute. In the past Canada would have used almost any excuse to keep out of such an entangling alliance. ...

As far as China is concerned the Canadian disposition seems to be towards understanding rather than provocation. ... If a middle power surrounded, as Canada is in the Pacific ... , by giants, leaves security initiatives to those giants and concentrates on economic issues in which it is a much more considerable factor, it is not necessarily blind to the possibilities of conflict and collision in that area; it may just be avoiding pretensions.

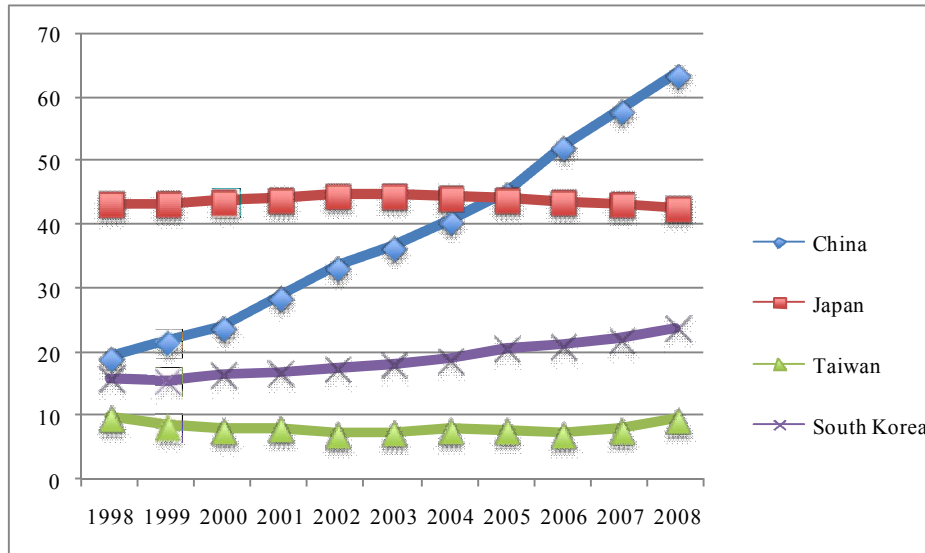
Perhaps the perspective of a lesser Pacific power serves to reveal the unreality of the concept of "Pacific security." Security is for people, not for water.

This perspective on Canadian interests in Pacific security, albeit from the Cold War era, likely has continuing resonance. However, as this article sets out to confirm, security is a notion evolving over time. The Canadian government is now very focused on Arctic security issues as the prospects of an ice-free Northwest Passage materialise. Climate change and accompanying continental shelf and land claims made by Russia and Denmark may yet drag Canada into the "Great Game" of international territorial competition. Long ignored as a vital security realm, Canada has ordered an increase in its northern military presence with the addition of an army training centre at Resolute Bay, a deep-water port at Nanisivik (in Canada's Nunavut Territory), the deployment of 900 Rangers and discussion of new ice-breakers, submarines and listening posts.²⁸

The fluidity of security concerns should not, however, be overstated. While it is true, as noted earlier, that terrorism now dominates the collective security stage instead of containing communist geo-political expansion, the fundamental ability of stable security structures to create and reinforce areas for democratic polities and capitalist economies to expand remains a positive outcome and, in some cases, an inducement to enter such arrangements. This has certainly proved true of NATO. The collapse of the Warsaw Pact, as a forced security arrangement of anti-democratic and anti-capitalist regimes, perhaps proves further the point.

28 See Tim Reid "Arctic Military Bases Signal New Cold War" *The Times* (London, 11 August 2007) <www.timesonline.co.uk>; Office of the Prime Minister of Canada "Expanding Canadian Forces Operations in the Arctic" (10 August 2007) Press Release; Murray Brewster "DND May be Shopping for New Subs, Sources Say" *The Globe and Mail* (Toronto, 10 October 2007) at A1; Rupert Cornwell "Canada Issues Warning to US over Arctic Passage" *The Independent* (London, 28 January 2006) <www.independent.co.uk>.

Of course, all these observations demand the question: whither China? The common motivator for each of the "resident" North East Asian powers might well be either the containment of China or the integration of an inexorably rising China within a multilateral security framework. The table below tracks defence spending (figures in US\$ billions) by each of the "resident" North East Asian powers (including Taiwan) from 1998-2008, highlighting a rise in Chinese spending on defence from approximately US\$20 billion in 1998 to US\$61 billion in 2008. Assuredly, a similar graphic sits on the desk of each Defence Minister in Seoul, Tokyo and Taipei.



V THE RISE OF CHINA

Some argue that an NPTO would be born of the necessity to bind China and the United States together in the security sphere as they already are in the economic sphere.²⁹ Ultimately, when China's emergence as a great power is complete, it will then assume its place in an established and stable security framework.³⁰

Eventually, the United States and China will need to establish some sort of NATO-like military alliance in Asia that binds these two military powers together in a strategic partnership. As that organization matures, the position of general secretary will probably rotate through the major Pacific Rim powers that are party to the agreement. While China is unlikely to be granted that post at the start, out of deference to America's long-term military allies in the region, eventually the post will rotate to Beijing, and when

29 Niall Ferguson *The Ascent of Money* (Allen Lane, London, 2008) at 283-339.

30 Thomas P M Barnett *The Pentagon's New Map: Blueprint for Action* (Putnam, New York, 2005) at 332.

it does, it will represent China's emergence as America's diplomatic equal in the Pacific – a real turning point in the history of the world.

However, as long as the current regime in North Korea persists in destabilising the region and China continues to keep North Korea as a client State,³¹ a central role in any collective security apparatus for China is hard to foresee – as North Korea would necessarily be the primary immediate concern toward which such an institution would be directed. Thus, the persistent question must be whether, lacking a common outside enemy, an NPTO could attract sufficient diplomatic, military and political commitments to mature into a meaningful alliance structure, or whether, after a short period of tilting at windmills, the structure would atrophy to irrelevance – as happened with SEATO.

The rise of China has long been foretold by political and historical observers. Since the consolidation of power on the mainland by communist forces, China has consistently sought to position itself for maximum strength and leverage in the region – culminating in its recognition by the United States and the acknowledgement of its permanent seat on the UN Security Council. Its economic liberalisation policies and peaceful absorption of Hong Kong led it to admission in the World Trade Organization and, along with a strategic devaluation of its currency, allowed China to become the world's workshop – integrating it economically with Japan, South Korea and Taiwan as well as with the United States and other western powers.

Now the third largest economy by gross domestic product (GDP) and poised to overtake Japan as second,³² China spends two per cent of its GDP (or US\$84.9 billion) on defence.³³ China's rise can be measured quantitatively, but it can also be measured qualitatively – through the assertions of power that it is willing to make. This has certainly been so with respect to Taiwan. It is also increasingly true with respect to territorial claims beyond Formosa. China's assertion of territorial sovereignty over the entirety of the South China Sea should raise not only regional, but also global concerns.

China's claim rests on what it considers to be legitimate occupation of portions of the Paracel and Spratly Island chains. China's Paracels claim is disputed by Vietnam, its Spratly claims are contested by Malaysia, the Philippines, Brunei, Taiwan and Vietnam – all of which have made their own claims. Both island chains are believed to be located near significant oil and natural gas

31 Bilateral trade between China and North Korea is almost US\$2 billion and growing; Chinese investment in North Korea has reached almost US\$40 million. See Ting-I Tsai "North Korean-China Trade Hotter than Kimchi" *Asia Times Online* (Hong Kong, 6 October 2007) <www.atimes.com>.

32 International Monetary Fund "Report for Selected Countries and Subjects" (October 2009) <<http://imf.org/>>.

33 Stockholm International Peace Research Institute *SIPRI Yearbook 2009* (Oxford University Press, Oxford, 2009) at 182.

reserves.³⁴ Although this territorial assertion occurs in South East Asia, the assertion is significant for shipping concerns and could impact on key trade routes leading to North East Asian States – not to mention fishing rights.

The People's Liberation Army is intent on developing China's naval capabilities – including the eventual deployment of a real blue water navy within ten years that includes six aircraft carriers.³⁵ It has already built a nuclear submarine base off Hainan Island – the base was discovered in 2008.³⁶

Of even greater concern to the Pentagon are massive tunnel entrances, estimated to be 60ft high, built into hillsides around the base. Sources fear they could lead to caverns capable of hiding up to 20 nuclear submarines from spy satellites.

The US Department of Defence has estimated that China will have five 094 nuclear submarines operational by 2010 with each capable of carrying 12 JL-2 nuclear missiles. ...

Christian Le Miere, editor for Jane's Intelligence Review, said the complex underlined Beijing's plan "to assert tighter control over this region".

"This is a challenge to any hegemonic power, particularly the US which still remains dominant in the region."

The United States has rebuffed the Chinese territorial claims despite a confrontation between Chinese and United States naval craft in March 2009:³⁷

While the United States does not make any claim to the territory, the U.S. military has been confronted by China while conducting operations in the area.

... a U.S. Navy ship, the USNS Impeccable, was harassed by a group of Chinese vessels. Beijing accused the United States of violating international law by carrying out activities in the area.

Deputy Assistant Secretary of Defense Robert Scher ... reiterated the U.S. position that its activities were in accordance with laws set by the United Nations. "Our military activity in this region is routine and in accordance with this customary international law. We will continue to conduct operations in the South China Sea, and U.S. activity will be based on our interest in the region and our desire to preserve security and stability throughout the western Pacific ..."

34 "US Reaffirms Its Rights to Operate in the South China Sea" (16 July 2009) Voice of America <www1.voanews.com>.

35 Thomas Harding "Chinese Nuclear Submarine Base" *The Telegraph* (London, 1 May 2008) <www.telegraph.co.uk>.

36 Ibid.

37 "US Reaffirms Its Rights to Operate in the South China Sea", above n 34.

But beyond the Spratly Islands and Taiwan, China is looking further afield to project its maritime military power – increasingly in Middle Eastern and more remote Pacific shipping lanes.³⁸ To achieve this, the government in Beijing is not only leveraging more money into defence spending overall, but re-allocating significant portions of that money within the defence budget.³⁹

China is in the midst of an ambitious bid to modernize its military by the middle of this century. A key part of this effort is to downsize its army – the world's largest – while beefing up its air force and navy. This will enable China to project military force farther beyond its borders.

To accomplish this internal priority shift, retired People's Liberation Army General Xu Guangyu said that balancing remains an important principle.⁴⁰

China's military is currently about 60 percent army, 20 percent navy and 20 percent air force. ... China can achieve its aims by going to 50 percent army, and 25 percent each for navy and air force.

VI CONCLUSION

Balance of power issues are endemic to any meaningful discussion of regional collective security. Soviet dominance of the Warsaw Pact caused Marshall Tito to hold Yugoslavia apart. United States dominance of NATO caused President de Gaulle to withdraw French military cooperation. SEATO collapsed for lack of meaningful participation in a United States dominated structure. Creation of an NPTO, if China were included, would bring together the world's largest nuclear powers – Russia, China and the United States, and constitute a regional security arrangement that, like NATO, includes three permanent members of the UN Security Council.

While the collective and individual State motivations explored in this article for concluding such an arrangement are compelling, obstacles to creating such an institution are so large as to render it a mere fantasy. Indeed, although proposed in the 1950s, no such body came into existence. The political impediments are manifold – both internationally and internally with respect to each country in question. Indeed, such notable commentators as Robert Kaplan give the notion no credence

38 Edward Wong "Chinese Navy Flexes Muscle in US Strongholds" *The Times of India* (25 April 2010) <<http://timesofindia.indiatimes.com>>:

The Chinese military is seeking to project naval power well beyond the Chinese coast, from the oil ports of the Middle East to the shipping lanes of the Pacific, where the United States navy has long reigned as the dominant force, military officials and analysts say.

China calls the new strategy "far sea defense", and the speed with which it is building long-range capabilities has surprised foreign military officials. The strategy is a sharp break from the traditional, narrower doctrine of preparing for war over the self-governing island of Taiwan or defending the Chinese coast.

39 Anthony Kuhn "China Sets Sights on Enhanced Air, Sea Power" (22 April 2010) National Public Radio <www.npr.org>.

40 Ibid.

whatsoever, arguing instead that the United States must focus on countering China's rise and not co-opting it.⁴¹

Moreover, Chinese and Korean resentment against Japan for World War II era occupation atrocities still smolder. Russian and Chinese territorial assertions (the Kuril Islands for the former and the Paracel and Spratly Islands for the latter) must be resolved. A definitive legal interpretation of Japan's peace provision contained in Article 9 of its Constitution must be made. Strategic and tactical agreement must be reached on engagement with North Korea. And the questions of whether a common defence provision should be lodged in the treaty and whether a common standing military force should be created must be addressed.

Additionally, the law of war must be agreed. Fundamental to any collective security system is agreement among the State parties on the rules for the resort to armed attack in the first place, as well as rules for the lawful conduct of hostilities. In NATO, the United States and its allies agree on the Geneva Conventions⁴² as a foundational understanding on the law of war – although they may disagree from time to time on nuances of their application. This is much easier within a collective security arrangement that is based upon a military alliance. Thus, an NPTO which included only the military allies of Japan, the United States, South Korea and possibly Canada would likely rest on a similar premise.

However, a collective security apparatus containing non-allies is more problematic. An NPTO comprised of Japan, the United States, South Korea, Canada, Russia and China raises the spectre of disagreement over the law of war which, by extension, would weaken the foundational concept of the collective security arrangement altogether. A common legal view of the Geneva law is imperative for this to work.

Despite all the obstacles and policy dilemmas, collective security remains a worthy goal of itself. Whether it is better reached informally or via a formal treaty organisation matters – as this question goes to reliance, predictability, mutually agreed obligations and, arguably, the stability and durability of the security agreement. While not beset by terrorist worries, the North East Asia region does have security concerns. These tend to be centred on North Korea, but regional States are mindful of increasing Chinese military capabilities. Unfettered, China may grow too strong to

41 Robert D Kaplan "The Geography of Chinese Power: How Far Can Beijing Reach on Land and Sea?" (2010) 89 Foreign Affairs 22.

42 Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Convention (III) relative to the Treatment of Prisoners of War (opened for signature 12 August 1949, entered into force 21 October 1950), common arts 3, 9 and 10; Convention (IV) relative to the Protection of Civilian Persons in Time of War (opened for signature 12 August 1949, entered into force 21 October 1950), arts 10 and 11.

constrain in ten years – especially as the United States' military presence in the region wanes. Perhaps enticing Beijing into the fold now is the smarter manoeuvre.

United States Secretary of Defence, Robert M Gates, noted recently that, generally speaking:⁴³

... helping other countries better provide for their own security will be a key and enduring test of U.S. global leadership and a critical part of protecting U.S. security, as well. Improving the way the U.S. government executes this vital mission must be an important national priority.

43 Robert M Gates "Helping Others Defend Themselves: The Future of U.S. Security Assistance" (2010) 89 Foreign Affairs 2 at 6.

